

United States Senate

WASHINGTON, DC 20510

May 8, 2019

Paul Enriquez
Environmental Branch Chief
Border Patrol Facilities and Tactical Infrastructure
Program Management Office
1300 Pennsylvania Avenue NW
Washington, DC 20229

Dear Mr. Enriquez,

We write to express our deep opposition to the Administration's proposal to construct 46 miles of new border wall in a remote area of New Mexico's southern border. It is clear that the proposed replacement of the existing vehicle barriers with steel bollard wall will have a significant negative impact on the state of New Mexico and represent an unlawful use and waste of funds Congress allocated to the Defense Department for other important purposes. We also find the 30-day comment period wholly inadequate for New Mexican stakeholders to thoroughly review and provide comment on a project of this magnitude, and believe U.S. Customs and Border Protection (CBP) should extend the comment period 90 days.

As a threshold matter, we must reiterate that the Trump Administration is violating appropriations law in their attempt to raid approximately \$1 billion in funding that Congress provided for military personnel and other national security purposes. This funding is to be diverted to construction of border wall that Congress debated at length, during a government shutdown, and ultimately decided not to fund. This unlawful act is being challenged by multiple parties in the courts and U.S. Department of Homeland Security (DHS) should not take any further action to commence construction until the judicial system has resolved this issue.

We have repeatedly heard from many border communities of New Mexico that they do not want the massive border structures that are part of this proposal, and it is not surprising that they oppose these plans. The City of Las Cruces passed a "No Border Wall" resolution in September of 2018, taking a firm and formal stance against the construction of new border barriers.¹ The city of El Paso, which would also be affected by the proposed project passed a similar resolution against border wall construction in 2017. Instead, New Mexican communities, including border communities, support more flexible border security assets, retention of agents in remote areas, and better infrastructure, technology and staffing at our ports of entry, which support jobs, the movement of friends and family, and are the location of most illicit trafficking.

Wherever similar structures are built they have disturbed or destroyed indigenous and cultural sites important to these communities, some that carry historical or archaeological significance.² These border structures are also known to cause devastating floods as debris is caught against the

¹ No Border Walls, noborderwalls.org/opposition/.

² Theintercept. "Trump's Border Wall Would Destroy Historic Gravesites in South Texas." The Intercept, 21 Jan. 2019, theintercept.com/2019/01/21/border-wall-gravesites-cemetery-texas/.

bollards and blocks the natural flow of water across the land. Even the construction and maintenance of these structures will endanger the health of nearby communities by impacting air and water quality.³

There is also no evidence that a bollard wall helps to reduce smuggling or curb migration. As walls and similar barriers have been erected over time in other areas there is nothing to suggest they have had an appreciable impact on the number of apprehensions by Border Patrol. Asylum seekers, who make up a large proportion of migrants currently seeking entry to the US, will not be deterred by these barriers and often seek out, rather than evade, law enforcement. Ports of entry continue to be the main pathway for the trafficking of illicit goods and should be prioritized for new safety and security equipment rather than sidelined as money is put into steel barriers that serve little purpose. In early 2018 port inspectors seized 8 times more cocaine, 17 times more fentanyl, 23 times more methamphetamine, and 36 times more heroin than the average Border Patrol agent. The amount of marijuana seized between ports of entry has fallen by nearly 80% in the last five years.⁴ The Drug Enforcement Administration's 2018 National Drug Threat Assessment states that transnational criminal organizations use ports of entry to smuggle the vast majority of their most profitable illicit products.⁵

In addition to being an unlawful and ineffective waste of taxpayer funds, the construction of these new barriers will irreparably harm sensitive ecosystems in the area that will result in both ecological damage, through the destruction of important habitats for endangered species, as well as economic impacts through the loss of recreational public lands that draw wildlife watchers and hunters to the region from across the country.

The areas impacted by the proposed new construction are in the Chihuahuan Desert ecoregion which contains a significant number of "species of greatest conservation need," including mountain lions, bobcats, gray foxes, mule deer and badgers. The proposed bollard wall would fracture their habitats and divide populations, preventing some animals from reaching food, water, or other resources they need to survive.⁶ There are also at least two endangered species in the area that would be threatened further by ecosystem destruction, the Aplomado falcon and Mexican gray wolf. Both species reside on either side of the proposed construction and would be subjected to habitat degradation, restricted access to prey, and other stressors on their populations.

DHS should also refrain from invoking the REAL ID Act to waive critically important laws, which effectively denies residents of border communities the same critical public health and environmental protections that communities everywhere else in the nation receive as a basic right. In New Mexico and other border states DHS has already waived nearly 50 laws for wall

³ "Death, Damage, and Failure." American Civil Liberties Union, www.aclu.org/report/death-damage-and-failure.

⁴ Bier, David. "How Legalizing Marijuana Is Securing the Border: The Border Wall, Drug Smuggling, and Lessons for Immigration Policy." Cato Institute, 19 Dec. 2018, www.cato.org/publications/policy-analysis/how-legalizing-marijuana-securing-border-border-wall-drug-smuggling.

⁵ <https://www.dea.gov/sites/default/files/2018-11/DIR-032-18%202018%20NDTA%20final%20low%20resolution.pdf>

⁶ Schwartz, John. "Why a Border Wall Could Mean Trouble for Wildlife." The New York Times, The New York Times, 24 Jan. 2019, www.nytimes.com/2019/01/24/climate/border-wall-wildlife.html.

construction including the Endangered Species Act, the National Environmental Policy Act, the Antiquities Act, Safe Drinking Water Act, and the Religious Freedom Restoration Act, as well as an uncounted number of state, local or tribal laws. The facts show us that the proposed structures will not stop migration, but will leave permanent scars on New Mexico's lands.

We urge CBP to reevaluate its proposal and consider other options for effective border security that take into account the fragility of the New Mexican border environment and its importance to our ecological and economic future. Furthermore, CBP should provide all stakeholders a meaningful opportunity to comment and therefore should extend the comment period 90 days. CBP must also consider the communities who will be most impacted by the heavy construction in the area, the loss of ecotourism to bolster their communities, and the fundamental impacts on their local cultures when they find themselves in the shadow of towering symbols of division.

Sincerely,

A handwritten signature in blue ink that reads "Tom Udall". The signature is fluid and cursive, with a large initial "T".

Tom Udall
United States Senator

A handwritten signature in blue ink that reads "Martin Heinrich". The signature is fluid and cursive, with a large initial "M".

Martin Heinrich
United States Senator

CC:

Kevin K. McAleenan
Acting Secretary of Homeland Security
1300 Pennsylvania Ave. NW
Washington, DC 20229

Carla L. Provost
Chief - U.S. Border Patrol
1300 Pennsylvania Ave. NW
Washington, DC 20229